

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: **ICC-01/14-01/18**

Date: **22 April 2020**

TRIAL CHAMBER V

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF *PROSECUTOR v. ALFRED YEKATOM AND PATRICE-
EDOUARD NGAÏSSONA***

**Confidential *EX PARTE* only available to the Yekatom Defence, the Office of the
Prosecutor, and the Registry**

**Prosecution's Request for Transcripts of a Non-Privileged Call made by Yekatom
in violation of Contact Restrictions**

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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I. INTRODUCTION

1. Pursuant to the Twelfth Registry Report on the implementation of contact restrictions concerning Alfred YEKATOM ("Twelfth Report"),¹ the Office of the Prosecutor ("Prosecution") requests access to the transcripts of a telephone call made by YEKATOM on 23 March 2020 ("23 March Call").² Access to the corresponding transcripts is critical to the Prosecution's ability to fairly assess and discharge its article 68 obligations.

2. As the Registry reports, the 23 March Call circumvented Pre-Trial Chamber II's order imposing contact restrictions on the Accused.³ In its recent decision, maintaining these contact restrictions, the Chamber concluded that the 23 March Call involved case-related issues and the use of obscure language.⁴ Since the communication may entail potential risks to the security and safety of witnesses, the Prosecution should be given access to the 23 March Call in order to fully assess any such risks and to ensure the preservation and integrity of its evidence.

II. CONFIDENTIALITY

3. In accordance with regulation 23 *bis* (1) of the Regulations of the Court, this document is filed as "Confidential, *EX PARTE*, only available to the Prosecution, Yekatom Defence, the Registrar, and the Detention Section", as it responds to filings and decisions of the same classification. The Prosecution however, does not oppose its reclassification to permit its distribution to the Ngaissona Defence, should the Chamber deem this appropriate.

¹ ICC-01/14-01/18-481-Conf-Exp.

² These transcripts were annexed to the Registry's Observations on "Yekatom Defence Request to Modify the Restrictions on Contacts and Communications to Eliminate Random Active Monitoring during Coronavirus pandemic". See ICC-01/14-01/18-467-Conf-Exp-AnxI.

³ ICC-01/14-01/18-467-Conf-Exp, paras. 22-27; Twelfth Report, paras. 13-14. These restrictions were subsequently adopted by Trial Chamber V ("Chamber") on an interim basis: see Email from the Chamber to the Prosecution and the YEKATOM Defence, 24 March 2020, at 19:46. They were further confirmed in its decision ICC-01/14-01/18-485-Conf-Exp, paras. 13, 22.

⁴ ICC-01/14-01/18-485-Conf-Exp, para. 22.

III. Access to the 23 March Call is needed to ensure the integrity trial evidence

4. As noted, the Twelfth Report refers to an incident which occurred during the active monitoring of YEKATOM's non-privileged calls on 23 March 2020. The incident involved a telephone call made by YEKATOM to an individual whose identity has not been disclosed to the Prosecution.⁵ The Registry reported it to the Chamber a week later on 30 March because it suspected that YEKATOM and his interlocutor had been "discussi[ng] Mr Yekatom's case, in obscure language."⁶

5. With the Chamber having now confirmed the Registry's suspicion that YEKATOM had been "discussing case-related issues and using obscure language",⁷ it is critical that the Prosecution has access to the relevant transcript of the 23 March 2020 Call.

6. *First*, article 68 requires the Prosecution to ensure the safety and security of victims and witnesses. To the extent that the 23 March Call concerns "case-related" matters, it may bear on potential risks to the security and welfare of witnesses and to the preservation of evidence. *Second*, the Prosecution is best placed to analyse the communication and to determine to what extent any risks may concretely arise, and whether they may affect its investigative activities and ability to ensure the integrity of evidence on which it intends to rely at trial.

7. As recognised by the Chamber,⁸ YEKATOM's influence over members of the Anti-Balaka constitutes a continued and serious risk not only to the safety of Prosecution witnesses residing in CAR, but also to the integrity of their evidence. Access to the content of the 23 March Call may reasonably assist the Prosecution in assessing and implementing responsive measures to protect its witnesses and/or to

⁵ Twelfth Report, paras. 13-14.

⁶ ICC01/14-01/18-467-Conf-Exp, para. 26.

⁷ ICC-01/14-01/18-485-Conf-Exp, para. 22.

⁸ ICC-01/14-01/18-485-Conf-Exp, para. 21.

preserve evidence potentially exposed to a heightened risk, as a result of YEKATOM's violation of the contact restrictions order.

IV. RELIEF SOUGHT

8. For the above reasons, the Prosecution requests the Chamber to grant it immediate access to the relevant transcript of the 23 March Call, as contained in ICC-01/14-01/18-467-Conf-Exp-AnxI.



Fatou Bensouda, Prosecutor

Dated this 22nd day of April 2020
At The Hague, The Netherlands